

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

JOSEPH DEBIASI,

Plaintiff,

v.

CARDINAL PIZZA, LLC,

Defendant.

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CIVIL ACTION NO. 5:22-cv-294 (MTT)

ORDER

On June 16, 2023, the Court denied plaintiff Joseph Debiasi's motion for default judgment because he failed to show that defendant Cardinal Pizza, LLC violated the Fair Labor Standards Act ("FLSA"). Doc. 22. Debiasi has now renewed his motion for default judgment. Doc. 23.

Debiasi makes a plausible argument for using the Internal Revenue Service standard business mileage rate for estimating reasonable vehicle expenses. Doc. 23-1 at 6-10. But he does not provide plausible evidence of underpayment by Cardinal Pizza. On the one hand, Debiasi's affidavit, perhaps reasonably, suggests he drove 45 to 75 miles per delivery shift of unstated duration. Doc. 23-2 ¶ 7. But he then states that he drove 14 miles per delivery and made 4 to 6 deliveries per hour. *Id.* If you do the math, that means when he made a delivery—which, of course, requires picking up the pizza from the restaurant, leaving the restaurant, driving in traffic, following the rules of the road (hopefully), and delivering the pizza—Debiasi, every minute of every hour, i.e., no stopping, drove no less than 56 miles per hour and up to 84 miles per hour.

That is just not plausible. Accordingly, his renewed motion for default judgment (Doc. 23) is **DENIED without prejudice**.

SO ORDERED, this 26th day of September, 2023.

S/ Marc T. Treadwell
MARC T. TREADWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT